



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

Peter S. Klainer, M.D.; Decision and Order

On August 20, 2021, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Peter S. Klainer, M.D. (hereinafter, Registrant) of Morehead City, North Carolina. OSC, at 1 and 3. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BK4940741. It alleged that Registrant is “without authority to handle controlled substances in North Carolina, the state in which [Registrant is] registered with DEA.” *Id.* at 2 (citing 21 USC 824(a)(3)).

Specifically, the OSC alleged that on November 13, 2020, the North Carolina Medical Board issued an Order suspending Registrant’s state medical license after finding that “there was probable cause to believe [Registrant] committed unprofessional conduct . . . after [he was] arrested and charged with nine felony counts of sexual exploitation of a minor in the second degree.” *Id.* The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 USC 824(c)(2)(C)).

Adequacy of Service

In a Declaration dated November 10, 2021, a Diversion Investigator (hereinafter, the DI) assigned to the Raleigh District Office of the Atlanta Field Division stated that on August 26, 2021, she “personally served the [OSC] on [Registrant] at the Carteret County Sheriff’s Office.” Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 3, at 1-2. The DI stated that as of the date of the Declaration, “neither [Registrant] nor any attorney representing [Registrant] has requested a hearing or submitted a written statement.” *Id.* at 2.

The Government forwarded its RFAA, along with the evidentiary record, to this office on November 10, 2021. In its RFAA, the Government represents that “[Registrant] has not submitted a timely request for a hearing” and that as of November 10, 2021, “neither [Registrant] nor any attorney representing [Registrant] has requested a hearing or submitted a written statement.” RFAA, at 1-2. The Government “seeks to revoke [Registrant’s DEA registration] because [Registrant] lacks authority to handle controlled substances in the State of North Carolina, the state where [Registrant] is registered with DEA” and “requests that the Administrator revoke [Registrant’s] [DEA registration] and deny any applications for renewal.” *Id.* at 1 and 5.

Based on the DI’s Declaration, the Government’s written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on August 26, 2021. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government’s written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant’s right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. § 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

FINDINGS OF FACT

Registrant’s DEA Registration

Registrant is the holder of DEA Certificate of Registration No. BK4940741 at the registered address of 3700 Symi Cir, Morehead City, NC 28557. RFAAX 1 (Certificate of Registration). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant’s registration expires on December 31, 2022. *Id.*

The Status of Registrant's State License

On November 13, 2020, the North Carolina Medical Board (hereinafter, the Board) issued an Order of Summary Suspension of License (hereinafter, Order). RFAAX 2, Appendix (hereinafter, App.) A, at 1 and 6. In its Order, the Board found that on or about November 4, 2020, “[Registrant] was arrested and charged with nine felony counts of Sexual Exploitation of a Minor in the Second Degree.” *Id.* at 1. The Board found that probable cause existed that Registrant committed the conduct for which he was arrested and charged and that “such conduct constitutes unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6) and grounds exist under that section of the North Carolina General Statutes for the Board to annul, suspend, revoke, or limit [Registrant’s] license to practice medicine or to deny any application he might make in the future for a license to practice medicine.” *Id.* at 5. As such, the Board found that “the public health, safety, or welfare requires emergency action” and ordered Registrant’s medical license summarily suspended. *Id.* at 6.

According to North Carolina’s online records, of which I take official notice, Registrant’s license is still revoked.¹ North Carolina Medical Board Licensee Search, <https://portal.ncmedboard.org/verification/search.aspx> (last visited date of signature of this Order). North Carolina’s online records show that Registrant’s medical license remains inactive and that Registrant is not authorized in North Carolina to practice medicine. *Id.*

Accordingly, I find that Registrant is not currently licensed to engage in the practice of medicine in North Carolina, the state in which Registrant is registered with the DEA.

DISCUSSION

¹ Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

Pursuant to 21 USC 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

According to North Carolina statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner,

including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” N.C. Gen. Stat. Ann. § 90-87(8) (West 2021). Further, a “practitioner” means a “physician . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.” *Id.* at § 90-87(22)(a) (West 2021). Because Registrant is not currently licensed as a practitioner in North Carolina, he is not authorized to dispense controlled substances in North Carolina.

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in North Carolina. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in North Carolina. Thus, because Registrant lacks authority to practice medicine in North Carolina and, therefore, is not authorized to handle controlled substances in North Carolina, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant’s DEA registration be revoked.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BK4940741 issued to Peter S. Klainer, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Peter S. Klainer, M.D. to renew or modify this registration, as well as any other pending application of Peter S. Klainer, M.D. for additional registration in North Carolina. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

Anne Milgram,
Administrator.